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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,855	12/20/2001	Andrea Susan Wulz	16,897	1818
22827	7590	08/08/2005		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/026,855

Applicant(s)

WULZ ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 17, 19-26, 31-34 and 36-50 is/are pending in the application.
- 4a) Of the above claim(s) 20, 22, 32, 33, 38 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17, 19, 21, 23-26, 31, 34, 36, 37, 39-42 and 44-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-31-05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5-31-05 has been entered.

### ***Election/Restrictions***

2. Claims 20, 22, 32-33, 38, and 43 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species.

### ***Amendments to the Application***

3. The amendment filed 5-31-05 does not comply with 37 CFR 1.121. For example, the parenthetical of claim 38 should have been --(Withdrawn and Currently Amended)--. This also applies to claim 43. Additionally with respect to claim 43, all the amendments made to line 2 were not shown. In Claim 40, section d), a typographical error was made, i.e. in line 1, "impermeable" should be --resilient--, note the previously filed claim as well as the added language, i.e. the terminology "resilient" not "impermeable" is used. Any further response should provide the appropriate corrections.

***Specification***

***Drawings***

4. The drawings were received on 5-31-05. These drawings are not approved by the Examiner because the changes to Figure 6 are not consistent with the description thereof, i.e. described as a cross section of Example 3 but Example 3 includes a backsheet 20 yet proposed Figure 6 does not.

***Claim Objections***

5. Claims 46-50 are objected to because of the following informalities: in claim 46, last line, one occurrence of “.” should be deleted. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 17, 19, 21, 23-26, 31, 34, 36-37, 39-42 and 44-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language “having an elevation and cross-sectional profile with...sloped surfaces” has been added to the claims but has not been specifically defined nor does there appear to be antecedent basis for this exact terminology. Furthermore, Applicant has not pointed out the support for this added language. Therefore for the purposes of this action such language will be interpreted to define an undulation of resilient material which has an elevated shape which shape defines a cross-

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sectional profile having sloped surfaces so as to have the function, property or capability set forth in the last section of each of claims 17, 40 and 46. Applicant further claims such sloped surfaces being either substantially liquid impermeable (the last sections of claims 17 and 46) or substantially liquid repellant (the last section of claim 40) so that the liquids are directed to the absorbent body without passing through the undulation. While page 15, lines 4-15 disclose the undulation of resilient material, not just its sloped surfaces, as being closed cell foam or treated so as to not readily absorb fluids and Examples 2 and 3 disclose undulations of resilient material being undulations of closed cell foam covered with plastic wrap, i.e. the entire undulation of resilient material is liquid impermeable, or does not readily absorb fluids, where is it disclosed that at a minimum the sloped surfaces are liquid impermeable as claimed? Liquid repellant as claimed? If Applicant traverses this rejection, the specific portion of the specification as originally filed which provides support for the scope of the claim language as now proposed.

### ***Claim Language Interpretation***

7. The directional words are defined as set forth on page 6, lines 15-20 and last six lines. "Liquid" and "liquid communication" are defined as set forth on page 6, lines 21-25. "Multilayer laminate" is defined as set forth on page 7, line 24. "Nonwoven", "nonwoven" fabric or web, "region", "area" and "spunbonded fibers" are defined as set forth at page 8. "Vapor permeable" is defined as set forth on page 9, second full paragraph. A technique of determining WVTR value is set forth in the paragraph bridging pages 9-10. "Resilient material" is defined as set forth in the paragraph bridging pages 14-15. See also discussion of claim language interpretation in preceding paragraph.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 17, 19, 21, 23, 26, 31, 34, 36-37, 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '336 in view of Sauer '300 and Grykiewicz '785.

Claims 17, 19, 21, 26, 31, 34, 36, 37 and 39: See Sauer '336 at Figures, especially 4 and 6-7, col. 10, lines 36-51, 60-67 and the paragraph bridging cols. 11-12, i.e. surfaces which slope downwardly, edges, i.e. lateral or longitudinal upper edges, which are curved, i.e. sloped downwardly, triangular profile, i.e. downwardly sloped surfaces, col. 13, line 65-col. 14, line 3, i.e. the front waist section is 22, the rear waist section is 24, the intermediate section is 26, the backsheet is 32, the topsheet is 34, the absorbent body is 36, the surge management layer is 54, also see col. 9, lines 39-47, and the undulation of resilient material is 60 which has an elevation or height and a cross-sectional profile with downwardly sloping surfaces, see, e.g., Figure 4 again. With respect to the backsheet see col. 6, lines 23-32 which disclose that the backsheet can be certain materials but does not set forth explicitly the claimed WVTR. However, see col. 6, line 64-col. 7, line 35 of Sauer '300, especially lines 29-33, which disclose that the backsheet can be the same materials as that of Sauer '336 or microporous material and certain specific films. Sauer however also does not set forth explicitly the WVTR. Furthermore, see Gryskiewicz '785 at col. 15, lines 17-38 which, at the very least, teach interchangeability of specific films which are the same as those taught by Sauer '300 for sheets of the claimed WVTR and, at the very most, teach those specific films have the claimed WVTR. Therefore, to make the backsheet of

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Sauer '336 a backsheet of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer '300 and Gryskiewicz. With regard to the undulation of resilient material, it is now claimed that such has sloped surfaces which are substantially liquid impermeable. Such surfaces are also claimed as thereby having the function or having the capability or property to direct fluids downwardly towards the absorbent body without passing such through the undulation. The element 60 is clearly described by Sauer as having sloped surfaces which are directed downwardly toward the absorbent body. It is the Examiner's first position that such sloped surfaces are liquid impermeable so that liquid may not pass through the undulation since the portions cited supra describe the elements 60 as "containment barriers", "containment" is defined by the dictionary is defined as the act or process of keeping within limits, holding back or holding down, restraining, controlling, checking or halting, "barrier" is defined by dictionary as a material object or set of objects that separate, demarcate or serve as a barricade and, e.g., col. 9, lines 1-2, i.e. prevents lateral flow, and col. 14, lines 25-38 (Note the language "Alternatively" in the sentence following a sentence describing barriers of foam and the alternative being absorbent materials, i.e. an alternative to nonabsorbent materials). In any case, i.e. the Examiner's second position, even if such is not deemed to be explicitly disclosed, to employ liquid impermeable surfaces on the containment barrier element of Sauer '336, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would better contain, better act as a barrier and/or better prevent flow and the desire by Sauer '336 to do so with elements 60. In so doing, the device taught by the prior art combination would necessarily and inevitably perform the function, capability or property of the last section of claim 17 as now claimed, i.e. direct fluids downwardly without passing such therethrough.

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Claim 23: see discussion supra. The term “highly breathable” is considered relative and thus, the backsheet of the prior art combination is also considered “highly breathable”.

Claims 40-42 and 44-50: see discussion supra. With regard to claims 40-42 and 44-45, it is claimed the sloped surfaces are liquid repellant. See also the paragraph bridging cols. 12-13 of Sauer ‘336, i.e. the elements 60 may be covered with a hydrophobic material. “Hydrophobic” is defined as “Antagonistic to, shedding, tending not to combine with or incapable of dissolving in water”, i.e. liquid repellant. Therefore, the surfaces of elements 60 are considered to be “fluid repellant”, if not already due to their impermeability, see discussion supra.

10. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer and Gryskiewicz as applied to claim 23 above, and further in view of Odorzynski et al ‘341.

Applicant claims the backsheet of a certain WVTR also being a film/spunbond nonwoven laminate. While Sauer ‘336 at col. 6, lines 23-44 as well as the portions defined supra teach a backsheet of a film/spunbond nonwoven laminate Sauer does not teach the claimed WVTR. See the discussion of Sauer ‘336 and ‘300 and Gryskiewicz supra as well as Odorzynski ‘341 at col. 6, line 47-col. 7, line 18, i.e. interchangeability of films or treated nonwovens with film/spunbond nonwoven laminates of the claimed WVTR. To make the backsheet of Sauer ‘336 a film/spunbond nonwoven laminate of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer ‘300, Gryskiewicz and Odorzynski et al.



***Response to Arguments***

11. Applicant's remarks of 5-31-05 been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive for the reasons set forth supra.

***Conclusion***

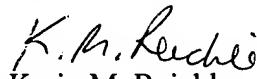
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Stern and Zehner et al references disclose the same foam also disclosed by Sauer '336 but explicitly disclose such may be a closed cell foam, i.e. liquid impermeable.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
August 1, 2005